

TEXAS COMPTROLLER *of* PUBLIC ACCOUNTS

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**Date:** July 22, 2004

**AP 91**

**To:** Audit Division Personnel

**From:** David Rock, Audit Headquarters

**Subject: Refund Letters**

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Attached are five new letters related to refunds. Use of these letters should begin immediately. Audit Headquarters is in the process of having templates created for these letters.

In order for correspondence to meet the legal requirements to constitute a refund claim, Texas Tax Code §111.104(c), requires three things. The claim must be written, state fully and in detail each reason or ground on which the claim is founded, and be filed before the expiration of the applicable limitation period. If any one of these elements is missing, the taxpayer has filed an imperfect claim. Statute does not toll until all these requirements are fulfilled. For guidance on how the Comptroller has construed the requirement of "state fully and in detail each reason...." refer to STARS #200306964T. Example: The taxpayer does not have to specify a particular provision within the manufacturing exemption as long as they state the claim is based on the manufacturing exemption. In addition, effective June 20, 2003, Texas Tax Code §111.104(b) provides that a refund claim may be filed with the comptroller only by the person who *directly* paid the tax to this state or by that person's attorney, assignee or other successor.

**1. Non-Permitted Taxpayer--30-day Letter:** Due to the change in §111.104(b), a non-permitted taxpayer must obtain an Assignment of Right to Refund Form(s) (assignment form) from each vendor to which tax was paid in error. If a non-permitted taxpayer files correspondence that does not include assignment forms and/or does not provide all the required elements per §111.104(c), a refund claim has not been filed and statute has not been tolled. If such correspondence is received, the following procedures should be followed: The *Non-Permitted TP--30-day letter* should be sent to notify the taxpayer that the statutory requirements have not been met and their correspondence will be held for 30 days. A refund assignment should be generated on Agency Work Manager (AWM). If, after the 30 days, the taxpayer has NOT complied, the AWM refund should be cancelled, the original taxpayer correspondence, and a copy of this 30-day letter should be sent to the refund subject matter expert in Audit Headquarters for imaging. This process will document that no further action was required of the Comptroller. If, the taxpayer has complied, the AWM refund should reflect the postmark date when the claim was perfected. The appropriate comments should be made in AWM indicating that the initial correspondence did not meet the statutory requirements and that statute was not tolled until the claim was perfected.

If a taxpayer files a refund claim that meets the statutory requirements, but was not permitted for the tax for the entire refund period, the claim for refund must also include assignment forms for the non-permitted period. One refund assignment should be generated, on AWM, for the period when the taxpayer was permitted and a second for the period when the taxpayer was not permitted. The vendor's statute will control for the non-permitted periods (refund assignment forms are required) and the purchaser's statute will control for the permitted periods. If assignment forms were not provided for transactions falling within the non-permitted period, the *Non-Permitted 30-day letter* should be sent and the procedures discussed above should be followed. If Audit Headquarters receives the correspondence described above, Audit Headquarters will generate the two refund assignments on AWM. Both AWM refunds will be transferred to the appropriate audit office, but the Non-Permitted 30-day letter should be sent by the auditor. Audit Headquarters will not consider the Rider 11 split of any imperfect refund claim falling in a non-permitted period. If the non-permitted taxpayer complies with the 30-day request, then the audit office will make the Rider 11 split when appropriate. Remember that the Rider 11 split of a refund for a non-permitted taxpayer is based on when the assignment forms were received, not on the postmark of the original filing.

If the non-permitted taxpayer files correspondence that meets the statutory requirements for Texas Tax Code §111.104(c) but does not provide assignment forms, then the paragraph regarding §111.104(c), should be deleted. Likewise, if the non-permitted taxpayer provided assignment forms but the correspondence does not meet the requirements of §111.104(c), then the paragraph regarding assignment forms, should be deleted.

**2. Imperfect Claim-Permitted Taxpayer Letter:** This letter should be issued when a permitted taxpayer has filed correspondence that does not meet the requirements of §111.104(c). If an imperfect claim is received, a 30-day letter should NOT be issued requesting that the taxpayer provide the missing required element(s) and a denial letter should NOT be issued. If an imperfect claim is received, a refund verification assignment should be generated on AWM. The taxpayer should be sent this letter informing them that their correspondence does not meet the statutory requirements and that statute has not been tolled. The AWM refund assignment should then be cancelled. The imperfect claim and a copy of the letter sent to the taxpayer should be sent to the refund subject matter expert in Audit Headquarters, for imaging. This process will document that no further action was required of the Comptroller. If the taxpayer later perfects the claim, a new refund assignment should be generated on AWM, using the postmark date of the perfected claim. Statute is tolled based on the postmark date of the perfected filing.

**3. Permitted Taxpayer--30-Day Letter:** This letter should be used when requesting additional documentation from a permitted taxpayer. This letter should be used only if the refund claim meets the requirements of §111.104(c). If any one of the required elements is missing, this letter should not be used. If the taxpayer is permitted for the refund period and files a proper refund claim per §111.104(c), but fails to comply with the 30-day request for additional documentation, the refund claim should be denied. See denial letter discussion in #4 below.

**4. 100 % Denial Letter:** This letter should be sent when a perfected claim from a permitted or non-permitted taxpayer is being fully denied. The reason(s) for the denial should be listed. The taxpayer should be given their rights regarding a refund hearing.

**5. Partial Denial Letter:** This letter should be sent when a perfected claim from a permitted or non-permitted taxpayer is being partially denied. The reason(s) for the partial denial should be listed. For partial denials, the refund cover letter will explain the rights to a refund hearing.

If you have any questions regarding these procedures, contact the Area Manager of Technical Support, the Technical Support section supervisor, or the refund subject matter expert in Audit Headquarters.

#### **Attachments Index**

- [Non-Permitted Taxpayer – 30 Day Letter \(AP 91A\)](#)
- [Imperfect Claim – Permitted Taxpayer Letter \(AP 91B\)](#)
- [Permitted Taxpayer—30-Day Letter \(AP 91C\)](#)
- [100% Denial Letter \(AP 91D\)](#)
- [Partial Denial Letter \(AP 91E\)](#)

**Attachment 1: Non-Permitted Taxpayer—30 Day Letter (AP 91A)**

«Date»

«TPNAME»

«Company»

«Address1»

«Address2»

«CityStZip»

RE: Sales Tax Refund Request - «TPNUMBER», (if any)

Dear «TPLASTNAME»:

This letter acknowledges on «Date Received» the receipt of your correspondence indicating an overpayment of «Tax Type» tax made to your vendor(s). Texas Tax Code §111.104(b) authorizes only the person who directly paid the tax to the state to file a refund claim with the Comptroller.

Our records reflect that you are not permitted for «Tax Type» tax; therefore, you are not authorized to file a refund claim directly with this office unless you obtain an Assignment of Right to Refund Form (“assignment form”) from your vendor(s). Until you submit assignment form(s) signed by your vendor(s), this office is unable to take any action, and your correspondence does not toll the statute of limitations.

In addition, your correspondence dated \_\_\_\_\_ would not be considered to be a refund claim because it does not meet the legal requirements as provided by Texas Tax Code §111.104(c). This statute requires refund claims to “state fully and in detail each reason or ground on which the claim is founded”.

As a matter of convenience, we will retain your submission for 30 days to give you the opportunity to obtain and file the assignment form(s); however, please be advised that our agreement to retain your initial paperwork does not stop the statute of limitations from running.

An Assignment of Right To Refund Form (00-985) is enclosed. To avoid having any of your potential refund claim barred by the statute of limitations, you should take immediate action to submit the assignment form accompanied by a written claim that states the reasons or grounds for the claim to my attention at the following address:

«Insert Address»

Also, once all documents that meet the requirements of a refund claim are submitted, additional information or documentation may be requested at a later date to verify the refund request. You may want to review 34 TAC §3.325 for the types of documents or information that are required by this office. A copy of §3.325 can be found on our website at [www.window.state.tx.us](http://www.window.state.tx.us).

If our office does not receive the properly completed assignment(s) form and a valid refund claim setting forth in detail the reasons or grounds for the claim within the 30-day period, we will close our file and no further action will be taken. This closure will not prevent you from seeking a refund in the future provided that you submit a proper claim accompanied by the required assignment form, but any such future filings will be subject to the statute of limitations.

If you have any questions, please call me at «Phone #».

Sincerely,

«Auditor Name»  
Auditor

Enclosure

**Attachment 2: Imperfect Claim-Permitted Taxpayer Letter (AP91B)**

«Date»

«TPNAME»

«Company»

«Address1»

«Address2»

«CITYSTZIP»

RE: Correspondence dated: \_\_\_\_\_

Dear «NAME»:

This letter acknowledges the receipt your correspondence dated \_\_\_\_\_ indicating an alleged overpayment of taxes for «PERIOD» through «PERIOD» in the amount of «Amount». Unfortunately, the correspondence does not constitute a refund claim because it does not meet the legal requirements as provided by Texas Tax Code §111.104(c). The statute requires a written refund claim to “state fully and in detail each reason or ground on which the claim is founded”. See also 34 TAC § 3.325 for additional requirements. A copy of §3.325 can be found on our website at [www.window.state.tx.us](http://www.window.state.tx.us).

Because your correspondence of \_\_\_\_\_ is not a refund claim under Texas Tax Code §111.104, this office is unable to take any action, and your correspondence does not toll the statute of limitations. You are hereby notified to submit a refund claim that satisfies the legal requirements, and until this office receives such claim, the statute of limitations will continue to run. To avoid having any of your potential refund claim barred by the statute of limitations, you should take immediate action to submit a proper refund claim to my attention at the following address:

«Insert Address»

You may, also, fax the claim to my attention to «Fax #».

If you have any questions, please may contact me by calling «Phone #».

Sincerely,

«Auditor Name»

Auditor

**Attachment 3: Permitted Taxpayer -- 30 Day Letter (AP 91C)**

«Date»

«TPNAME»

«Company»

«Address1»

«Address2»

«CITYSTZIP»

RE: «Tax Type» Refund Request

«TPNUMBER»

«Refund Period»

Dear «NAME»:

This acknowledges receipt of your correspondence dated «RECDATE» requesting a refund of Texas Sales tax for the period «Refund Period».

Because your submission adequately states fully and in detail each reason or ground on which the claim is founded, it is considered a valid refund claim as of the date of its receipt for statute of limitations purposes.

However, your refund request cannot be processed without the following additional documentation or information, which must be postmarked by «*DUE DATE*»:

**Delete those that are not applicable and add as necessary:**

- Power of Attorney completed by your client. You can visit our website: [www.window.state.tx.us](http://www.window.state.tx.us) to obtain a copy of our Power of Attorney form.
- The reasonable estimate of the amount of refund requested.
- The legal entity name and taxpayer number of the assignor (party who remitted the tax).

No action will be taken on your request until the foregoing indicated documentation or information is received. THE REQUEST WILL BE DENIED IF SUCH DOCUMENTATION OR INFORMATION IS NOT RECEIVED (POSTMARKED) WITHIN 30 DAYS OF THE DATE OF THIS LETTER. Additional information or documentation may be requested at a later date to determine the validity of your request.

All requested documentation should be mailed to my attention at the following address:

«INSERT ADDRESS»

If you have any questions, please call me at «PHONE NUMBER».

Sincerely,

«AUDITOR NAME»  
Auditor



**Attachment 4: 100% Denial Letter (AP91D)**

«Date»

«TPNAME»

«Company»

«Address1»

«Address2»

«CITYSTZIP»

RE: «Tax Type» Refund Request

«TPNUMBER»

«Refund Period»

Dear «NAME»:

Your refund claim covering «REFUND PERIOD» through «REFUND PERIOD» has been reviewed, and our examination indicates that the requested refund must be fully denied. The refund is being denied for the following reasons: «REASON DENIAL».

If you disagree with the denial or believe that your refund request or documents were not properly considered, you are entitled to appeal the denial by requesting a refund hearing. The written request (Statement of Grounds) must be submitted within 30 days of the date of this letter and must state all factual and legal grounds or reasons as to why you disagree with the denial. See 34 TAC §§1.5 and 1.7. A copy of the Rules of Practice and Procedures can be found on our website at [www.window.state.tx.us](http://www.window.state.tx.us). Additional supporting documentation should accompany the request, and the written request should be timely mailed to:

Comptroller of Public Accounts  
Audit Processing Section  
P.O. Box 13528  
Austin, TX 78711-3528

If you have any questions about hearing procedures, please call our Audit Processing Section at 1-800-531-5441, extension 3-4479. Their Austin number is 512/463-4479. If you have any questions regarding the denial of your claim, please give me a call at «PHONE #».

Sincerely,

«Auditor Name»

Auditor

**Attachment 5: Partial Denial Letter (AP 91E)**

«Date»

«TPNAME»

«Company»

«Address1»

«Address2»

«CITYSTZIP»

RE: «Tax Type» Refund Request

«TPNUMBER»

«Refund Period»

Dear «NAME»:

Your refund claim covering «REFUND PERIOD» through «REFUND PERIOD» has been reviewed, and our examination indicates that the requested refund must be partially denied. The refund amount has been reduced for the following reason(s): «REASON DENIAL».

If you have any questions regarding the denial of your claim, please give me a call at «PHONE #».

Sincerely,

«Auditor Name»

Auditor